

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

AMERICAN DAIRY QUEEN
CORPORATION,

Plaintiff and Counter Defendant,

OPINION AND ORDER

v.

16-cv-323-wmc

UNIVERSAL INVESTMENT
CORPORATION,

Defendant and Counter Claimant.

The court held a final pretrial conference today during which the court heard argument on reserved motions and directed the parties to file supplemental briefing on certain issues. The purpose of this order is simply to formalize those rulings.

ORDER

IT IS ORDERED that:

- 1) Travelers Insurance Company of America's motion to intervene for purposes of submitting proposed special verdict form (dkt. #159) is DENIED AS MOOT.
- 2) The court will hear any additional evidence and argument on plaintiff American Dairy Queen Corporation's claim for injunctive relief under the Lanham Act while the jury is deliberating on liability of the WFDL claims and, if necessary, at the close of the jury trial.
- 3) American Dairy Queen Corporation has until end of day September 20, 2017, to file a brief on Universal Investment Corporation's standing to bring the Iowa counterclaim; Universal's response is due by end of day September 22, 2017. Universal should also be prepared to make a proffer of damages on this claim during a break during the first day or two of trial. If the court agrees Universal has standing, this claim will proceed in a second phase before the same jury.
- 4) The previously reserved portion of American Dairy Queen's motion in limine to exclude argument relating to other Dairy Queen franchisees (dkt. #128) is GRANTED IN PART AND DENIED IN PART, as follows:

- a. The motion is denied as to ADQ's request to preclude Universal from arguing that evidence of non-compliance by out-of-state franchisees is material to the jury's determination of whether the termination was non-discriminatory.
 - b. The motion is granted as to the admissibility of evidence of non-compliance which were not the basis for Universal's termination (e.g., shelving placement and use of onions). In other words, Universal may present evidence of non-compliance by other ADQ franchisees that concern: (1) noncompliance with meat testing; (2) noncompliant soft serve products; and (3) refusal to allow inspections or otherwise cooperate with Dairy Queen.
- 5) The parties should file an amended joint deposition designation chart by end of day September 20, 2017. In addition to filing the chart, the court requests that the parties also email a version in word to Chambers at wiwd_wmc@wiwd.uscourts.gov.
- 6) American Dairy Queen may submit all objections and proposed changes to the court's draft closing instructions by noon, Wednesday, September 20, 2017. Universal's response is due by noon, Thursday, September 21, 2017. In addition to submitting a brief, American Dairy Queen should also file a redlined version of its proposed edits to the closing instructions and email a version in word to Chambers at wiwd_wmc@wiwd.uscourts.gov.
- 7) The parties should advise the court of any withdrawn exhibits or withdrawn objections to defendant's Exhibit 591 through end by 8:00 a.m. on Thursday, September 21, 2017.
- 8) The court will hold a telephonic conference on September 21, 2017, at 9:00 a.m. Counsel for American Dairy Queen to establish call to Chambers at 608-264-5087.

Entered this 19th day of September, 2017.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge